

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BRENT MORRIS,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:16-cv-00212-MMD-WGC

ORDER

Petitioner Brent Morris has submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis* (ECF Nos. 1, 1-1, 3). First, it appears from the financial information provided that Morris is able to pay the \$5.00 filing fee. Second, 28 U.S.C. § 2254(a) provides that a federal court: “shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” However, Morris claims in his filing that during his arrest on state charges he was deprived of a sum of money in the course of a search and seizure that violated his Fourth Amendment rights (ECF No. 1-1). While he may have a claim that is cognizable under 42 U.S.C. § 1983, he does not state a claim for which federal habeas relief may be granted.

Thus, the present action will be dismissed without prejudice to the filing of either a new petition in a new action or a civil rights complaint with either the appropriate filing fee or a completed application to proceed *in forma pauperis* on the proper form with

1 both an inmate account statement for the past six months and a properly executed
2 financial certificate.

3 It is therefore ordered that this action is dismissed without prejudice as set forth
4 in this order.

5 It is further ordered that a certificate of appealability is denied, as jurists of reason
6 would not find the Court's dismissal of this improperly commenced action without
7 prejudice to be debatable or incorrect.

8 It is further ordered that the Clerk send petitioner two (2) copies each of an
9 application form to proceed *in forma pauperis* for incarcerated persons and a civil rights
10 complaint pursuant to 42 U.S.C. § 1983 form, one (1) copy of the instructions for each
11 form, and a copy of the papers that he submitted in this action.

12 It is further ordered that petitioner's application to proceed *in forma pauperis*
13 (ECF No. 1) is denied.

14 It is further ordered that the Clerk enter judgment accordingly and close this
15 case.

16 DATED THIS 6th day of October 2016.

A handwritten signature in blue ink, appearing to read 'Miranda M. Du', is written over a horizontal line.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE